

PROB. 12B
(7/93)

ORIGINAL

United States District Court

for the

DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AUG 06 2008
at 2 o'clock and 45 min. M.
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: ASO TOFILAU

Case Number: CR 03-00243SOM-01

Name of Sentencing Judicial Officer: The Honorable Susan Oki Mollway
U.S. District Judge

Date of Original Sentence: 2/17/2004

Original Offense: Count 1: POSSESSION WITH INTENT TO DISTRIBUTE IN
EXCESS OF 50 GRAMS OF METHAMPHETAMINE, in violation of
21 U.S.C. § 841(a), a Class A felony

Original Sentence: Offender was sentenced to 46 months imprisonment followed by
3 years supervised release with the following special conditions:
1) That the defendant participate in a substance abuse program,
which may include drug testing at the discretion and direction of the
Probation Office; 2) That the defendant is prohibited from
possessing any illegal or dangerous weapons; and 3) That the
defendant provide the Probation Office access to any requested
financial information.

Type of Supervision: Supervised Release Date Supervision Commenced: 1/12/2007

PETITIONING THE COURT

☒ To modify the conditions of supervision as follows:

General Condition: That the defendant shall refrain from any unlawful use
of a controlled substance. The defendant shall
submit to one drug test within 15 days of the
commencement of supervision and at least two drug
tests thereafter but no more than eight valid drug
tests per month during the term of supervised
release, unless there is a positive drug test, in which
event the maximum shall increase to up to one valid
drug test per day (mandatory condition).

Special Condition No. 1: That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing in a program approved by the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

CAUSE

The offender is a 24-year-old male who pled guilty to a drug possession offense that involved the distribution of 50 grams or more of crystal methamphetamine. The offender's supervised release began on 1/12/2007. On 1/14/2008, he completed substance abuse treatment and the drug testing component of his treatment regimen without difficulty. The offender's adjustment on supervision is evaluated as good. He has a stable residence, he has been gainfully employed since the commencement of supervision, and he appears to have a stable relationship with his mother. Criminal records check revealed no information of a new arrest. Given that the instant offense is a drug offense, coupled with the offender's substance abuse history, continued drug testing is prudent. In light of U.S. vs. Stephens, we are recommending the collection of no more than eight valid drug tests per month. The modification is necessary so that the Probation Office could conduct random drug testing.

At the same time, we are also requesting a modification of the special condition that requires the offender to participate in and comply with substance abuse treatment which includes drug and alcohol testing. This modification reinforces our position that drug testing is a component of substance abuse treatment. The proposed modifications are necessary to continue to monitor risk factors and to provide the necessary correctional treatment in the event of a drug relapse and when drug treatment is appropriate. The offender agreed to the modifications included in this report.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The offender waives his right to a hearing and to assistance of counsel. The offender agrees to the modifications of the conditions of supervised release. The

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offender's attorney and the U.S. Attorney's Office have been notified of the proposed modifications and have no objections to the modifications.

Respectfully submitted by,



FITUINA F. TUA
Senior U.S. Probation Officer

Approved by:

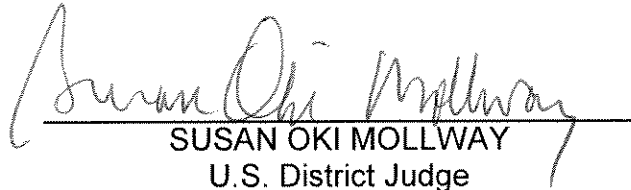


GENE DeMELLO, JR.
Supervising U.S. Probation Officer

Date: 7/30/2008

THE COURT ORDERS:

- ☒ The Modification of Conditions as Noted Above
☐ Other



SUSAN OKI MOLLWAY
U.S. District Judge

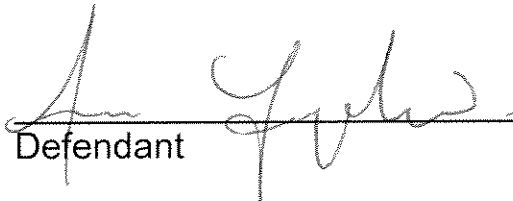
AUG 05 2008
Date

NOTICE REGARDING MODIFICATION OF CONDITIONS

The defendant understands that any modification of court-ordered conditions is not a waiver of those conditions or of any consequence of violating those conditions. Violations that have preceded this or any modification of conditions may be considered by the court as a basis for revoking supervised release or probation, especially, but not only, in the event of a future violation, whether any such future violation is similar to or different from any preceding violation.

The absence of this notice does not confer, and should not be interpreted by the defendant as conferring, any rights on the defendant. The absence of this notice does not indicate, and should not be interpreted by the defendant as indicating, any position by the court or by the defendant. Even in the absence of this notice, supervised release or probation may, in the future, be revoked based on violations occurring before this or any other modification of conditions.

Agreed to and acknowledged:


Defendant

Print Name: ASO TOFILAU

Date: 7/22/08

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.


I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

☒ To modify the conditions of supervision as follows:

General Condition: That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drugs tests thereafter but no more than eight valid drug tests per month during the term of supervised release, unless there is a positive drug test, in which event the maximum shall increase to up to one valid drug test per day. (mandatory condition).

Special Condition No. 1: That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing in a program approved by the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

Witness:


FITUINA F. TUA
Senior U.S. Probation Officer

Signed:


ASO TOFILAU
Supervised Releasee


Date